Supreme Court, U.S.
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No. 08-1528

IN THE
Supreme Court Of The United States

PATRICK J. SIKORSKI,
Petitioner

v.

OKEMO MOUNTAIN, INC.
SALMON & NOSTRAND
RICHARD P. COUTANT,
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY TO OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

REPLY TO OPPOSITION 1

I. Okemo Misunderstands Rule 50 1

II. Okemo's Argument Claiming There Was No Error Below Is Premature 2

A. The Constitutionality Of Rule 50, When Properly Applied, Is Not In Question 3

B. The Issue Of Fact Presented To The Jury Was Created By The Court Of Appeal's Remand 3

CONCLUSION 5

TABLE OF AUTHORITIES

Page

CONSTITUTIONAL PROVISIONS

United States Constitution, amend. VII.....3

RULES

Federal Rule of Civil Procedure 50 ..... passim

REPLY TO OPPOSITION

Petitioner Patrick J. Sikorski replies to Respondents Timothy Mueller and Okemo Mountain, Inc.'s (collectively "Okemo") Opposition to Sikorski's Petition for Writ of Certiorari as follows.

I. Okemo Misunderstands Rule 50

Okemo raises four points in its Brief in Opposition. Petitioner agrees with three of them. [1] However, Petitioner disagrees with Okemo's fourth point asserting that the "question . . . put to the jury is irrelevant when a court considers a post-trial motion under Rule 50(b)." (Opp. at 8). According to Okemo, any analysis of the sufficiency of evidence to support a jury's verdict would have to be performed in a vacuum without regard to the question the jury was charged to answer. To the contrary, Rule 50 expressly requires a reviewing court to determine whether there was a legally sufficient evidentiary basis for a jury to find for a party on "an issue." Unless and until the "issue" is identified, the reviewing court would have nothing against which to measure the sufficiency of evidence on that issue. As long as the issue is properly framed for the jury and not subject to challenge, the jury question provides the unquestioned polestar against which any Rule 50 analysis of the sufficiency of evidence must be measured.

In this case, given that Okemo proposed the form of the question that was presented to the jury on the release issue and did not claim error in the formulation of the

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[1] Petitioner agrees that "the Constitutionality of Rule 50 is thoroughly settled." (Opp. at 6). Petitioner agrees that "the case involves nothing more than a determination of the intent of the parties to an ambiguous document." (Opp. at 11). Petitioner agrees that "disillusionment is not grounds for review" by the Supreme Court. (Opp. at 14). Okemo's points I and IV are really the same point framed in different ways.

question on appeal, Okemo cannot challenge its propriety.[2] Thus, in this case, rather than being irrelevant, the jury question presented to the jury is precisely the issue on which any Rule 50 analysis should have been performed. However, rather than perform its Rule 50 analysis on the question presented to the jury, both reviewing courts measured the sufficiency of evidence against a different issue than that actually presented to the jury for factual determination. This deprived Mr. Sikorski of his constitutional right to a jury trial on the issue that was actually tried.[3]

II. Okemo's Argument Claiming There Was No Error Below Is Premature

The remainder of Okemo's Opposition argues that the district court committed no error in the trial below. Okemo is missing the point of this petition. The time to argue whether there was error below is not now. The time to argue whether actual error was committed will come if this Court grants the Petition for review. The issue now before this Court is whether the claimed error below is sufficiently significant to justify this Court's time or, alternatively, whether the error is so plain that justice requires that it be corrected immediately. This Petition satisfies both criteria because it seeks to establish a bright line rule prohibiting the alteration of a jury question when reviewing courts evaluate the sufficiency of evidence under Rule 50. As evidenced by this case, such a rule is needed to delineate hard boundaries for courts when reviewing jury

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[2] Perhaps, this is why Okemo now claims the formulation of the question is "irrelevant."

[3] For that matter, Mr. Sikorski was also deprived of his constitutional right to a jury trial on the reformulated question never put to the jury but on which judgment was entered by the reviewing courts.

verdicts under Rule 50 and to preserve litigant's unquestioned constitutional rights.

A. The Constitutionality Of Rule 50, When Properly Applied, Is Not In Question

Notwithstanding Respondents' lengthy recitation of law establishing the constitutionality of Rule 50 (Opposition at p. 6-8), the Petition never put the constitutionality of Rule 50 in issue. Rather, the issue before this Court concerns whether changing the jury question when reviewing a verdict under Rule 50, as occurred here, deprives litigants of constitutional rights to a jury trial and due process. Does the Seventh Amendment allow a court, under the guise of Rule 50, to redefine "the issue" at trial *after* the jury has spoken and then issue judgment as a matter of law on an issue never tried, and never presented to the jury? The error committed here by the reviewing courts is so plain, it should and must be corrected to ensure justice.

B. The Issue Of Fact Presented To The Jury Was Created By The Court Of Appeal's Remand

Respondents also misstate the proceedings below. Respondents say: "The matter before both the district court and the court of appeals in this case was whether the evidence presented at trial by Sikorski on the release was sufficient to create an issue of fact for the jury." (Opposition at p. 10.) This was not the matter before the courts. Okemo's pronouncement ignores both the language of Rule 50 and the express remand by the court of appeals that drove the parties to a jury trial in the first place.

In 2004, the court of appeals sent the case back for trial because the legal ambiguity of the release in question needed to be "interpreted by a fact-finder as a question of fact." Pet. App. 3a. Thus, following the trial on remand,

the "matter" before the district court and the court of appeals was *not* whether under Rule 50 "the evidence presented at trial by Mr. Sikorski on the release was sufficient to *create* an issue of fact for the jury." (Opposition at p. 10)(emphasis added.) The court of appeals had already determined that a genuine issue of material fact existed when it sent the case back for a trial. Mr. Sikorski's burden after the remand was to prove that his interpretation of the ambiguous document was the correct one. On this issue, the jury was the sole fact-finder and, contrary to Respondents' unsupported assertions, it did not serve in an advisory capacity.

Thus, following the jury's verdict in favor of Mr. Sikorski on the release issue, the issue before the district court, and later before the court of appeals, was whether, under Rule 50, Mr. Sikorski had presented sufficient evidence to allow the jury to find in Mr. Sikorski's favor on "the issue," or question of fact that *was* presented to the jury for determination by the district court. That question, as proposed by Okemo's counsel, was: "Considering all the facts and circumstances surrounding its execution, do you find that the February 23, 1995 General Release was intended to release the fraudulent inducement claim by Okemo against Mr. Sikorski?" Pet. App. at 52a. By glossing over the distinction between this question and the one framed and answered by the district court and the court of appeals,[4] Okemo avoids squarely facing the issue raised by the Petition.

In the same vein, Respondents' notion that "the district court and the court of appeals both concluded [under Rule 50] that no question, however, framed, should have been presented to the jury regarding the intent of the

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[4] Notably, Okemo does not contest, and thereby concedes, that the two questions were materially different from each other.

parties to the release" (Opposition at 10) has no support in the record or the law of Rule 50. The release had already been determined to be ambiguous by the court of appeals and the case remanded for a jury trial. The jury was charged with determining the meaning of the release. Both sides presented evidence and argument supporting their interpretations. To say that "no question, however framed" should have been presented to the jury is nonsensical, and overlooks the court of appeals' remand expressly for the purpose of presenting the question to a jury.

CONCLUSION

By changing the question presented to the jury after the verdict was delivered and then weighing the sufficiency of evidence against the materially modified question, the courts below deprived Mr. Sikorski of his constitutional right to a jury trial on the question that was actually tried to the jury. To preserve all litigants' constitutional rights to a jury trial, this Petition asks this Court to clarify and establish a bright line rule prohibiting post-verdict modifications of the jury question when reviewing courts conduct a Rule 50 analysis.

Respectfully submitted,

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